



004330

Contract #

069037

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:

Department: Department of Transportation Agency Code: 810 Division: Procurement, referred to as (STATE), and the following CONTRACTOR:Northwest Pipe Company

Name

6307 Toledo Street

Address

Houston

City

Texas

State

77008

Zip

Contact Person Larry PeakPhone # (800) 369-5009Fax # (713) 863-4350E-mail lpeak@nwpipe.comFederal Tax ID# 93-0557988Vendor # 581551Commodity Code # 57 044000405

LEGAL STATUS OF CONTRACTOR

☐ Sole Proprietor☐ Non-Profit Corporation☒ For-Profit Corporation☐ Partnership☐ Government Agency

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:
Utah Department of Transportation with Slipbase Sign Post System and accessories.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on RX#, RX-810-56000000169,
FY 2005 Bid# GL5059-1
4. CONTRACT PERIOD: Effective date 15 August 2005 Termination date 14 August 2009 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options: (1) 1-year option.
5. CONTRACT COSTS: CONTRACTOR: Requirements Contract See Attachment D for Pricing.
6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work
ATTACHMENT C: Special Terms and Condition
ATTACHMENT D: Pricing

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid # GL5059-1
Dated: 18 May 2005.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Contractor's signature

9/9/05

Date

Larry Peak Traffic Systems Customer Service
Type or Print Name and Title

STATE

Kelvin G. Thacker, Procurement Manager Date

Director, Division of Purchasing

Date

Director, Division of Finance

Date

SEP 29 2005

SEP 30 2005

Paul Kikuchi

Agency Contact Person

801-965-4071

Telephone Number

801-965-4818

Fax Number

pkkuchi@utah.gov

E-Mail

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Additional Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: July 5, 2005)

1.0 General Information

Utah Department of Transportation (UDOT) is contracting with Northwest Pipe Company for a tubular steel Slipbase Sign Post System. This will be a 4-year requirements contract with a one-year option.

2.0 Requirements

The system shall be a multi-directional breakaway sign post system designed so that at the time of impact, the post and sign rotate over the vehicle safely.

Breakaway characteristics of the sign system will allow for reuse of most of the sign post components after it has been hit with easy installation.

System may be rotated in the base casting to allow alignment of the sign to the roadbed before the base bolts are tightened. System shall have approval from FHWA, and meet AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals.

3.0 Post Requirements:

3.1 Sizes and Lengths

Post Requirements						
Post Size	Length	O.D.	Wall (Nominal)	Weight	Section Modulus	Yield Strength
2 ½" BWG 10	12'	2.875"	0.134"	3.92 lb/ft	.754 in ³	55,000 PSI
2 ½" Schd 80	12' 14' 16' 18'	2.875"	.276"	7.66 lb/ft	1.339 in ³	46,000 PSI

3.2 Meets or exceeds NCHRP Report # 350

3.3 Requires inventory of only two posts, BWG10 and Schedule 80. Each post has the same O.D. diameter of 2.875 O.D. with a wall thickness of .134" and 2.76" wall nom.

3.4 Material shall be galvanized for long life.

3.5 Posts shall come with pre-drilled holes for the attachment of the pre-fabricated "T" or "U" sign support brackets.

3.6 Post requirements per ASTM A-513 and A-653 or A-500.

4.0 Base Requirements

4.1 System shall use the same stub base for both BWG10 and Schedule 80 posts.

4.2 System can be used on a single, dual, or triple sign post installation.

4.3 The following items make up a Slipbase system.

4.3.1 Ground stub for both posts, stub shall be made of 3" schedule 40 pipe, 36" in length that is hot dipped in galvanized with a plate welded to its top.

4.3.2 Slipbase Casting slides onto the post functioning as the post support. The post is locked onto the casting using a Locking Collar.

Attachment B
Slipbase Sign Post System
Specifications

- 4.3.3 Locking Collar is a split-ring which is driven over the end of the post and tightened. The collar keeps the upper casting from slipping off during an impact.
- 4.3.4 Bolt Retainer Plate, bolts, washers and nuts connect the ground stub plate and the Slip Base in proper alignment.

5.0 Other Requirements

- 5.1 Able to attach Z-Bar Sign Back Bracing to posts.
- 5.2 Suppliers shall offer fabricated “T” and “U” sign support brackets.
- 5.3 Uses only 2” or 2½” U-bolt sign clamps.
- 5.4 Does not require any welding during installation or repair.

End

Attachment C
Slipbase Sign Post System
Special Terms and Conditions

1.0 Invoicing

In the event the State is entitled to a cash discount, the period of computation shall commence on the delivery date or the date of a correct invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date final approval is authorized. The State reserves the right to adjust incorrect invoices.

Submit Invoices To:

Utah Department of Transportation
Accounts Payable
4501 South 2700 West
Box 141510
Salt Lake City, Utah 84114

State shall remit payment by U.S. mail or electronic transfer.

2.0 Delivery

Product shall be delivered to UDOT within 30-days after receipt of order.

3.0 Defectives

After UDOT has requested credit for defective product and the return of product is desired back, supplier shall pay for all shipping and handling charges back to supplier or factory. Contractor shall provide a UPS or similar pickup tag to UDOT. Credit or replacement of product shall be made within 15-days after initial request.

4.0 Pricing

The Contractor agrees prices on signposts and accessories in this contract shall be guaranteed for four (4) years. Any price increases will be reviewed if the awarded vendor requests a price increase. The awarded vendor must show proper documentation of the price increase not exceeding the increase in the PPI data using the formulation listed below. Any change in prices must be made at least thirty (30) days prior to the requested effective date. Any such request must include sufficient documentation supporting this request. Request for change on any pricing in this contract shall not be effective until approved by the UDOT's Procurement Manager.

5.0 Fuel Surcharge

A base line will be established for the price of diesel fuel at the time the contract is initiated. Information for the base line will be determined from the web site www.eia.doe.gov / Retail On-Highway Diesel Prices / U.S. Average. Fuel prices may be reviewed on the 1st Monday of December and June, at which time we will review the impact of the contract. The data used from The Retail On-Highway Diesel Prices / U.S. Average to change the price in this contract will become the new baseline.

Attachment C
Slipbase Sign Post System
Special Terms and Conditions

See "Attachment D" for Retail On-Highway Diesel Price baseline.

6.0 Price Escalation Clause

The state wishes to maintain price increase and price decreases through a defined price escalation clause for the life of the contract.

The Producer Price Index (PPI) Commodity Data for Iron Steel Pipe & Tube Mfg from Purch. Steel, commodity code 33121 is the preferred index. This index can be found at www.bls.gov to be seasonally adjusted and it is the state's intent to only use a single Producer Price Index Commodity Code. If this Commodity Code is deleted or discontinued by the Bureau of Labor Statistics at anytime in the future an alternate code will be chosen by the State Utah with input accepted from the awarded vendor.

Base Price

The base price for each item will be your quoted price listed on the bid sheet. That will be referred to as the "Base Price" of each item. This Base Price will be tied to the preliminary June's PPI data for Iron Steel Pipe & Tube Mfg from Purch. Steel, commodity code 33121 that are usually made available during the second full week of the month following the reference date.

Time Frame for Price Increases or Decreases

Price changes may be submitted on:

After January 18th using December's PPI data.

After July 18th using June's PPI data.

The state will expect to take any price decreases on those dates during each year of the contract.

Calculation of Price Changes

The calculation for price changes will be completed by using the simple percentage method. In using this method, the base price is changed on each item by the same percentage as the percentage change for the selected price index. Here is an example.

Escalation Factor = (Index at time of calculation) / (Index at time contract prices were set)

Index at price adjustment	115.0
Divided by index when bid price (base price) was set	<u>110.0</u>
Escalation Factor = (115.0/110.0)	1.045

This same example works in a De-Escalation situation.

This calculation indicates that the contract price should be increased by .045%.

Attachment C
Slipbase Sign Post System
Special Terms and Conditions

The new base number (115.0) will be used in the next price escalation / decrease trimester period.

See "Attachment D" for the contracts current baseline.

Price Guarantee Period

The base price must be guaranteed until June 2006.

Responsibility of Price Notifications

It will be the responsibility of Northwest Pipe to notify the state of any price increase requests.

Price decreases maybe triggered by the awarded vendor or the state.

End.

Attachment D
Slipbase Sign Post System
Pricing

1. **Delivered price based on full truckload quantities with (2) stops.**

Region 1
166 West Southwell Street
Ogden, Utah 84404-4194

Region 2
370 West 5900 South
Murray, Utah 84107

Central Warehouse
4501 South 2700 West
Salt Lake City, Utah 84119

Region 3
658 North 1500 West
Orem, Utah 84057

Region 4 / Richfield
1345 South 350 West
Richfield, Utah 84701

Region 4 / Cedar City
1470 N. Airport Road
Cedar City, Utah 84721

Region 4 / Price
940 South Carbon Ave
Price, Utah 84501

Attachment D
Slipbase Sign Post System
Pricing

2. Pricing

Commodity Number	Product Description	Product Number	Unit Pack	Weight Per Unit Pack	Pricing
57044000405	BWG Schedule 10 Sign Post 12'	25747	25 Pcs.	1,143 lbs.	\$39.48
57044001011	Schedule 80 Sign Post 12'	2929	25 Pcs.	2280 lbs.	\$90.24
57044001015	Schedule 80 Sign Post 14'	2932	25 Pcs.	2660 lbs.	\$105.28
57044001032	Schedule 80 Sign Post 16'	2935	25 Pcs.	3040 lbs.	\$120.32
57044001034	Schedule 80 Sign Post 18'	2938	25 Pcs.	3420 lbs.	\$135.36
57044001020	Slipbase Assembly	15062	25 Pcs.	1150 lbs.	\$65.63
57044001022	"T" Bracket	21459	25 Pcs.	500 lbs.	\$31.83
57044001024	"U" Bracket	21781	25 Pcs.	1083 lbs.	\$51.30
57044001028	2-1/2" Clamp	207	100 Pcs.	40 lbs.	\$2.81
Special Order	Splice Connectors	2829	25 Pcs.	43 lbs.	\$1.76
Special Order	Extenders	25757	50 Pcs.	600 lbs.	\$8.56
Special Order	E-Z Lift Tool	2702	1 each	29 lbs.	\$200.00

3. Price Per Foot For Non Stock Posts.

Description	Price Per Foot
BWG 10 Posts Not Listed Above	\$3.29 per ft.
Schedule 80 Posts Not Listed Above	\$7.52 per ft.
Accessories Not Listed Above	Call For Pricing
Parts	Call For Pricing

4. Terms

Minimum Order Not Delivered
Whole Bundle or package quantity.

Minimum Order Freight Prepaid
44,000 lbs per truckload, maximum (2) delivery points.

Volume Discounts
None.

Seasonal Discounts / Please Specify
None.

Other Discounts and Terms offered:
None.

5. Producer Price Index

Should you disagree with the Producer Price Index commodity code that is noted in Attachment C, note below your requested commodity with an explanation. Your single recommended commodity code must be selected from the Producer Price Index.

Nothing was noted on the bid.

6. National Average Retail On-Highway Diesel Price

The baseline for this contract will be set at \$2.567 based on Retail On-Highway Diesel Price dated August 15, 2005. See Attachment C for the details.

7. Producer Price Baseline

The baseline for this contract will be set at 157.2 based on the PPI Commodity 33121 dated July 2005.

End